

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

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v.

**C.A. No. T17-0023  
07422001523**

**MICHAEL KELLY**

**DECISION**

**PER CURIAM:** Before this Panel on January 31, 2018—Magistrate Kruse Weller (Chair), Chief Magistrate Guglietta, and Magistrate DiSandro, sitting—is Michael Kelly’s (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-21-4, “Places where parking or stopping prohibited.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On December 8, 2016, Officer Stephen McElroy (Officer McElroy) of the Rhode Island Airport Police issued Appellant a citation for the abovementioned violation. *See* Summons No. 07422001523. The Appellant contested the charged violation, and the matter proceeded to trial on June 15, 2017. (Tr. I at 2, June 15, 2017).

At trial, Officer McElroy testified that on the day he issued Appellant the citation, he was assigned to monitoring traffic on the Arrivals Roadway at T.F. Green Airport. *Id.* at 6. While monitoring a crosswalk located on that roadway, Officer McElroy observed a blue Jeep pull into a parking spot that was clearly designated for long-term parking shuttles. *Id.* Officer McElroy

approached the driver of the vehicle—later identified as Appellant—who indicated that “he was not going to move the vehicle, that he was loading his wife, and she was coming from across the street.” *Id.* In response, Officer McElroy informed Appellant that if he did not move his vehicle, he would receive a citation. *Id.* at 6-7. Officer McElroy testified that Appellant then began yelling at him. *Id.* at 7. At that point, Appellant’s wife had crossed the street and arrived at the vehicle. *Id.* The Appellant proceeded to load his wife’s belongings into the vehicle and get into the driver’s seat. *Id.* Officer McElroy then requested Appellant’s license and registration. *Id.* After first handing Officer McElroy an attorney’s business card, Appellant provided the requested information. *Id.*

Officer McElroy returned to his vehicle with Appellant’s information to prepare a citation. *Id.* Upon returning to Appellant’s vehicle with Lieutenant David Shinsky (Lieutenant Shinsky) Officer McElroy issued Appellant the citation. *Id.* at 8. During that interaction, Lieutenant Shinsky photographed Appellant’s vehicle parked under the “No Parking” sign. *Id.*; *see also* State Exhibit 1. Officer McElroy added that Appellant’s vehicle was parked in that location for approximately five minutes. *Id.* He also noted that “[a]s [he] approached [Appellant’s vehicle] the shuttle bus was trying to pull in the spot, and [it] couldn’t pull in the spot . . . The bus was out in the roadway . . . .” *Id.*

The Appellant also testified at trial. *Id.* at 10. The Appellant stated that he pulled up to the curb on the Arrivals Roadway to pick up his wife. *Id.* at 11. After approximately thirty seconds, an officer approached Appellant and stated that he could not stop his vehicle and wait for his wife because she was not yet at the curb. *Id.* The Appellant indicated that he could see her exiting the airport, but the officer told him that he had to move his vehicle. *Id.*

At that time, Appellant drove around the block and then pulled “into the commercial area to avoid going into the arrival area.” *Id.* While he was in the area designated for commercial vehicle use, he saw his wife who had already crossed the Arrivals Roadway. *Id.* It was then that Officer McElroy approached Appellant’s vehicle. *Id.*

After testimony concluded, the Trial Magistrate discussed Appellant’s Motion to Dismiss for Lack of Jurisdiction that had been raised prior to the start of trial. *Id.* at 13. Ultimately, the Trial Magistrate indicated that time was needed to properly determine the jurisdiction issue as well as reach a decision on the merits. *Id.* at 13. The matter was continued until July 5, 2017. *Id.* at 14.

On that day, the Trial Magistrate denied Appellant’s Motion, finding that the court had jurisdiction “to hear all violations [of] state statutes relating to motor vehicles[,]” which included the statute Appellant was charged with violating. (Tr. II at 4, July 5, 2017.) With respect to the charged violation, the Trial Magistrate stated that the testimony from the two witnesses at trial was “not terribly inconsistent.” *Id.* Based on the testimony, the Trial Magistrate found that Appellant’s vehicle was parked in an area that “was for shuttle buses only; clearly indicating that any vehicle other than a shuttle bus was prohibited from parking there.” *Id.* at 6-7. The Trial Magistrate also determined that Appellant’s vehicle had been parked in the spot for one to two minutes; therefore, none of the exceptions provided in the statute applied. *Id.* Based on these findings, the Trial Magistrate sustained the violation. *Id.* at 8.

Having been aggrieved by the Trial Magistrate’s decision, Appellant filed this timely appeal. Forthwith is this Panel’s decision.

## II

### Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record

or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant asserts that the Trial Magistrate’s decision was affected by error of law and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant argues that the Trial Magistrate erred by finding that the exemption in § 31-21-4(b)(2) did not apply, as such a finding produces an absurd result.

It is well settled that “[i]n matters of statutory interpretation [this Panel’s] ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *Alessi v. Brown Court Condominium*, 44 A.3d 736, 740 (R.I. 2012). (citing *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)). “[W]hen the language of a statute is clear and unambiguous, this [Panel] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Iselin v. Retirement Board of the Employees’ Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008). However, a statute is ambiguous when “a word or phrase in a statute is susceptible of more than one reasonable meaning.” *Drs. Pass & Bertherman, Inc. v. Neighborhood Health Plan of Rhode Island*, 13 A.3d 1263, 1269 (R.I. 2011). When such ambiguity exists, this Panel must “apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.” *Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018) (citing *State v. Diamante*, 83 A.3d 546, 550 (R.I. 2014)).

The statute at issue in this matter, § 31-21-4(a)(14), provides: “No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the direction of a police officer or traffic control device, in any of the following places[] . . . (14) At any place where official signs prohibit stopping[.]” Importantly, § 31-21-4(b)(2) establishes an exemption to the statute’s general prohibition: “The following vehicles are exempt from the prohibitions contained in subsection (a)[] . . . (2) Subject to the provisions of § 31-21-6, vehicles that are momentarily stopped, standing, or parked to admit or discharge passengers. . . .”<sup>1</sup>

Section 31-21-4(b)(2) does not define the term “momentarily.” As an undefined term that is susceptible of more than one reasonable interpretation, the rules of statutory construction must be employed to determine the Legislature’s intent in enacting the provision. *See Grasso*, 177 A.3d at 489; *Drs. Pass & Bertherman, Inc.*, 13 A.3d at 1269. To properly do so, the statute must be reviewed to “consider the statutory meaning most consistent with the statute’s policies or obvious purpose.” *Bailey v. American Stores, Inc., Star Market*, 610 A.2d 117, 119 (R.I. 1992).

It is clear from the language of the statute that the Legislature enacted § 31-21-4(b)(2) to establish an exemption to the general prohibition on stopping, standing, or parking where an official sign indicates doing so is not permitted. The Legislature clearly intended to allow vehicles to stop, stand, or park while passengers are entering or exiting the vehicle. *See* § 31-21-4(b)(2); *Grasso*, 177 A.3d at 489. The exemption’s purpose is to protect public safety while serving the practical needs of pedestrians, passengers, and motorists. Moreover, the statute serves

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<sup>1</sup> Section 31-21-6 “Admission or discharge of passengers,” provides that “[t]he driver of any vehicle admitting or discharging passengers to or from his or her vehicle shall do so as close as practicable to the right-hand curb or edge of the roadway.” The Appellant’s compliance with this section is not contested.

to minimize traffic by preventing vehicles from having to stop, stand, or park for passengers to enter or exit in an area that would cause other motorists to have to stop or slow down.

Having gleaned the purpose of § 31-21-4(b)(2) from the language used by the Legislature, this Panel is in agreement with the Trial Magistrate's interpretation of the term "momentarily" when read in the context of that section. The record reveals that the Trial Magistrate interpreted the word "momentarily" as meaning "continuing only a moment, something which is fleeting or done in an instant."<sup>2</sup> (Tr. II at 7.) The Trial Magistrate also described a factual circumstance in which the § 31-21-4(b)(2) exemption would apply:

"Clearly, had [Appellant's] wife been at the curb at the time [Appellant] pulled . . . up to the place, which is restricted for shuttle buses only, and she had [] entered into the vehicle immediately, and he had pulled on his way, I believe he would have been parked there momentarily . . ." *Id.*

It is undisputed that Appellant parked his vehicle for one to two minutes in an area designated for long-term shuttle bus use only. (Tr. II at 6.) During the time that Appellant's vehicle was in that spot, Officer McElroy walked over to Appellant's vehicle, Appellant exited the vehicle and informed Officer McElroy that his wife was coming across the street, Appellant's wife crossed the street and arrived at the vehicle, and Appellant re-entered and again exited the vehicle to continue his confrontation with Officer McElroy. (Tr I at 6-7, 11.) Based on

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<sup>2</sup> In his decision, the Trial Magistrate stated: "There's no definition of momentary in the general laws, so I'm looking in Webster's dictionary, momentary is defined in Webster's [as] "continuing only a moment something which is fleeting or done in an instant." (Tr. II at 7.) The Appellant highlights the fact that the Trial Magistrate defined the term "momentary" and not the term "momentarily." The term "momentarily" is defined as "for a moment; instantly; at any moment; for a short time; very soon." *Momentarily*, Merriam-Webster's Dictionary (11th ed. 2016). The Appellant's assertion that the two definitions are distinct and that this Panel should find that the term "momentarily" must be defined as "happening within a short time or a very short time" is without merit as it disregards the entirety of the definition. *See* Appellant's Memo. in Supp. of Appeal at 7. The definition of the two terms are so substantially similar that it is a difference without a distinction for the purposes of this appeal.

the witnesses' testimony, it is clear that Officer McElroy's interaction with Appellant—from the time Appellant stopped his vehicle until the point that Officer McElroy requested Appellant's license and registration—exceeded the length of time during which Appellant's vehicle could have been momentarily stopped pursuant to § 31-21-4(b)(2).

Furthermore, this Panel finds that such an interpretation of the term “momentarily” does not produce an absurd result. *See Sauro v. Lombardi*, 178 A.3d 297, 304 (R.I. 2018) (quoting *Mendes v. Factor*, 41 A.3d 994, 1002 (R.I. 2011)) (“Under no circumstances will th[e] [c]ourt construe a statute to reach an absurd result.”) The Trial Magistrate's hypothetical involving a passenger waiting on the curb for a vehicle to arrive, presents a reasonable circumstance that aligns with this Panel's interpretation of § 31-21-4(b)(2). Such an interpretation does not impose a time requirement on a vehicle that stops momentarily to load or unload a passenger; rather, the § 31-21-4(b)(2) exemption simply does not apply to the facts in the record.

For the reasons stated, this Panel finds that the Trial Magistrate properly determined that Appellant violated § 31-21-4(a)(14), and that the § 31-21-4(b)(2) exemption does not apply. Accordingly, the Trial Magistrate's decision was not affected by error of law or clearly erroneous. Sec. 31-41.1-8(f)(4)-(5).

## IV

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the Trial Magistrate's decision was not affected by an error of law or clearly erroneous in view of the entire record. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and Trial Magistrate's decision is affirmed.

ENTERED:

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Magistrate Erika Kruse Weller (Chair)

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Magistrate Domenic A. DiSandro, III

DATE: \_\_\_\_\_

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.